

Gabriel Huey (SBN 291608)

[gabriel.huey@klgates.com](mailto:gabriel.huey@klgates.com)

Stacey Chiu (SBN 321345)

[stacey.chiu@klgates.com](mailto:stacey.chiu@klgates.com)

K&L GATES LLP

10100 Santa Monica Blvd, 8<sup>th</sup> Floor

Los Angeles, CA 90067

Telephone: +1 310 552 5000

Faxsimile: +1 310 552 5001

Attorneys for Defendant,  
WEYERHAEUSER NR COMPANY

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

RUBEN AUDELO, individually, on behalf of himself and others similarly situated

**Case No.**

[Originally filed in County of Shasta  
Superior Court Case No.: 24CV-  
0206069)

**Plaintiff.**

## DEFENDANT

**WEYERHAEUSER NR  
COMPANY'S NOTICE OF  
REMOVAL TO FEDERAL  
COURT**

[28 U.S.C. §§ 1331, 1332, 1367,  
1441, & 1446]

Complaint filed: September 23, 2024

1 **TO THE CLERK OF THE FEDERAL DISTRICT COURT FOR THE**  
2 **EASTERN DISTRICT OF CALIFORNIA:**

3 PLEASE TAKE NOTICE THAT pursuant to 28 U.S.C. sections 1331, 1332,  
4 1367, 1441 and 1446 and 29 U.S.C. section 185(a), Defendant WEYERHAEUSER  
5 NR COMPANY (“Defendant”), by and through its attorneys, K&L Gates LLP,  
6 hereby removes to this Court the action entitled, *Ruben Audelo vs. Weyerhaeuser*  
7 *NR Company, et al.*, Case No. 24CV-0206069 (the “State Court Action”) from the  
8 Superior Court of the State of California, County of Shasta. In support of this  
9 Notice of Removal of Action (“Notice”), Defendant states as follows:

10 **I. STATEMENT OF JURISDICTION**

11 1. This Court has original jurisdiction over this Action on three (3)  
12 independent grounds. First, the Court has original jurisdiction pursuant to the Class  
13 Action Fairness Act of 2005 (“CAFA”), which vests the United States district courts  
14 with original jurisdiction of any civil action: (a) that is a class action with a putative  
15 class of more than a hundred members; (b) in which any member of a class of  
16 plaintiffs is a citizen of a State different from any defendant; and (c) in which the  
17 matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest  
18 and costs. *See* 28 U.S.C. §1332(d). CAFA authorizes removal of such actions in  
19 accordance with United States Code, title 28, section 1446. Second, the Court has  
20 original jurisdiction under 28 U.S.C. section 1331 based upon the existence of a  
21 federal question. This Action is subject to removal pursuant to 28 U.S.C. section  
22 1441(a) because it arises under Section 301(a) of the LMRA, 29 U.S.C. Section  
23 185(a). Third, this Court has supplemental jurisdiction over Plaintiff’s Private  
24 Attorneys General Act of 2004 (“PAGA”) claim and any remaining state-law claims  
25 under 28 U.S.C. § 1367(a) because they arise from the same common nucleus of  
26 operative fact as Plaintiff’s class claims. As set forth below, this case meets all of the  
27 requirements for removal under federal question, CAFA jurisdiction, and  
28 supplemental jurisdiction and has been timely and properly removed by the filing of

1 this Notice.

2       2. By filing this Notice, Defendant does not intend to waive, and hereby  
3 reserves, any objection as to venue, the legal sufficiency of the claims alleged in the  
4 Action and all other defenses. Defendant reserves the right to supplement and amend  
5 this Notice.

6       **II. PLEADINGS, PROCESS, AND ORDERS**

7       3. On September 23, 2024, Plaintiff RUBEN AUDELO (“Plaintiff”) filed  
8 a Class Action Complaint for Damages against Defendant and various Doe  
9 defendants in the matter of *Ruben Audelo vs. Weyerhaeuser NR Company, et al.*, in  
10 Shasta County Superior Court, Case No. 24CV-0206069 (hereinafter, the  
11 “Complaint”). The Complaint is attached to the Declaration of Gabriel M. Huey  
12 (“Huey Decl.”) as **Exhibit “A”**.

13       4. On January 27, 2025, Plaintiff filed a First Amended Class Action and  
14 PAGA Complaint for Damages against Defendant and various Doe defendants  
15 (hereinafter, the “FAC”).

16       5. Defendant was not served with the initial Complaint before Plaintiff  
17 filed the FAC. (Huey Decl., ¶ 3.) On February 13, 2025, Plaintiff served the  
18 Summons and FAC on Defendant through Defendant’s counsel via Notice and  
19 Acknowledgment of Receipt, copies of which are attached to Huey Decl. as **Exhibit**  
20 **“B”**.

21       6. Along with the Summons and FAC, Defendant has received a Civil Case  
22 Cover Sheet; ADR Package; and Notice of Case Assignment. These documents are  
23 attached to Huey Decl. as **Exhibit “C”**.

24       7. Defendant filed and served its Answer to Plaintiff’s Unverified First  
25 Amended Complaint on March 14, 2025. Defendant’s Answer is attached to Huey  
26 Decl. as **Exhibit “D”**.

27       8. Pursuant to 28 U.S.C. section 1446(d), the attached Exhibits A - D  
28 constitute all process, pleadings and orders served on Defendant or filed or received

1 by Defendant in this action. To Defendant's knowledge, no further process,  
 2 pleadings, or orders related to this case have been filed in Shasta County Superior  
 3 Court or served by any party. (Huey Decl., ¶ 7.)

4       9. To Defendant's knowledge, no proceedings related hereto have been  
 5 heard in Shasta County Superior Court.

### 6       **III. TIMELINESS OF REMOVAL**

7       10. This Notice of Removal is timely filed as it is filed within thirty (30)  
 8 days of February 13, 2024, the date of service of the Summons and FAC, and within  
 9 one year from the commencement of this action. *See* 28 U.S.C. § 1446(b). Because  
 10 the 30-day deadline falls on Saturday, March 15, 2025, the filing period is extended  
 11 to the next court day, Monday, March 17, 2025, pursuant to Federal Rule of Civil  
 12 Procedure 6(a)(1)(C).

### 13     **IV. BASIS FOR REMOVAL**

14       11. This Court has original jurisdiction over this Action based upon the  
 15 existence of a federal question and pursuant to CAFA, each of which are independent  
 16 and sufficient. In addition, the Court has supplemental jurisdiction over Plaintiff's  
 17 Private Attorneys General Act of 2004 ("PAGA") claim and any remaining state-law  
 18 claims under 28 U.S.C. § 1367(a).

#### 19     **A. CAFA Jurisdiction**

20       12. CAFA creates federal jurisdiction over lawsuits in which "the matter in  
 21 controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs,  
 22 and is a class action in which . . . any member of a class of plaintiffs is a citizen of a  
 23 State different from any defendant," and involves a putative class that consists of  
 24 more than 100 members. 28 U.S.C. §§ 1332(d)(2)(A) and (d)(5). Each of these three  
 25 requirements is met.<sup>1</sup>

26       13. As set forth below, this Court has jurisdiction over this case under

---

28       <sup>1</sup> A notice of removal need only provide a "short and plain statement of the grounds  
 29 for removal." 28 U.S.C. § 1446(a). Because § 1446 tracks Rule 8's liberal pleading  
 DEFENDANT WEYERHAEUSER NR  
 COMPANY'S NOTICE OF REMOVAL TO  
 FEDERAL COURT

1 CAFA, 28 U.S.C. section 1332(d), and this case may be removed pursuant to the  
 2 provisions of 28 U.S.C. section 1441(a), in that it is a civil class action wherein: (1)  
 3 the proposed class contains at least 100 members; (2) Defendant is not a state, state  
 4 official or other governmental entity; (3) there is diversity between at least one class  
 5 member and the sole named and served Defendant; and (4) the total amount in  
 6 controversy for all class members exceeds \$5,000,000.

7           ***1) The Proposed Class Contains at Least 100 Members***

8       14. 28 U.S.C. section 1332(d)(5)(B) sets forth that the provisions of CAFA  
 9 do not apply to any class action where “the number of members of all proposed  
 10 plaintiff classes in the aggregate is less than 100.” This requirement is easily met in  
 11 the case at bar.

12      15. Plaintiff seeks to represent a class consisting of “[a]ll current and former  
 13 non-exempt employees employed by Defendants in the State of California during the  
 14 four (4) years prior to the filing of this class action until certification (“Class  
 15 Period”).” (FAC, ¶ 1.) Plaintiff filed the initial Complaint on September 23, 2024.  
 16 According to Plaintiff’s definition, there are approximately 238 putative class  
 17 members in this case to date. (*See Declaration of Tatiana Cass in Support of Notice*  
 18 *of Removal of Civil Action to Federal Court (“Cass Decl.”) ¶ 4.*)

19           ***2) Defendant Is Not a Governmental Entity***

20       16. Under 28 U.S.C. section 1332(d)(5)(B), CAFA does not apply to class

---

21 standard, a notice of removal need only allege the grounds plausibly and need not be  
 22 supported by evidentiary submissions. *See Dart Cherokee Basin Operating Co., LLC*  
*v. Owens*, 135 S. Ct. 547, 554 (2014) (“In sum, as specified in § 1446(a), a  
 23 defendant’s notice of removal need include only a plausible allegation that the  
 24 amount in controversy exceeds the jurisdictional threshold. Evidence establishing the  
 25 amount is required by § 1446(c)(2)(B) only when the plaintiff contests, or the court  
 26 questions, the defendant’s allegation.”); *Roa v. TS Staffing Servs., Inc.*, No. 2:14-CV-  
 27 08424-ODW, 2015 WL 300413, at \*2 (C.D. Cal. Jan. 22, 2015) (“The ‘short and  
 28 plain statement’ language from § 1446(a) applies to the entire notice of removal, and  
 therefore would apply equally to all CAFA allegations and not just the amount-in-  
 controversy requirement.”).

1 actions where “primary defendants are States, State officials, or other governmental  
2 entities against whom the district court may be foreclosed from ordering relief.”

3       17. Defendant is a corporation, not a state, state official or other government  
4 entity exempt from CAFA. (Cass Decl., ¶ 2.)

5           **3) Diversity of Citizenship Is Satisfied**

6       18. CAFA’s minimal diversity requirement is satisfied, *inter alia*, when  
7 “any member of a class of plaintiffs is a citizen of a State different from any  
8 defendant.” 28 U.S.C. §§ 1332(d)(2)(A); 1453(b). In a class action, only the  
9 citizenship of the named parties is considered for diversity purposes and not the  
10 citizenship of the class members. *Snyder v. Harris*, 394 U.S. 332, 339-40 (1969).  
11 Minimal diversity of citizenship exists here because Plaintiff and Defendant are  
12 citizens of different states.

13       19. An individual’s domicile supporting diversity of citizenship can be  
14 determined by, *inter alia*, physical residency and place of employment. *Lew v. Moss*,  
15 797 F.2d 747, 751 (9th Cir. 1986); *Lopez v. Costco Wholesale Corporation*, 2021  
16 WL 487368, \*2 (E.D. Cal. Feb. 10, 2021). Plaintiff’s FAC states that he “is a  
17 California citizen.” (FAC, ¶ 5.) The FAC also states that “Plaintiff was employed  
18 in Defendants’ warehouse facility.” (FAC, ¶ 5.) Plaintiff was employed by  
19 Defendant from approximately October 12, 2022 to approximately June 28, 2023.  
20 (Cass Decl., ¶ 3.) Throughout his employment, Plaintiff’s address on file was in the  
21 city of Redding, California. (Cass Decl., ¶ 3.) “[C]ourts have created a presumption  
22 in favor of an established domicile as against a newly acquired one.” *Lew*, 797 F.2d  
23 at 751. Therefore, at the time Plaintiff commenced this action and, upon information  
24 and belief, at the time of removal, Plaintiff resided in and is a citizen of the State of  
25 California.

26       20. Conversely, Defendant is not a citizen of California. Plaintiff’s FAC  
27 states that Weyerhaeuser NR Company was “incorporated in Washington . . .”  
28 (FAC, ¶ 6.) Defendant was a duly formed Washington corporation in good standing

1 at the time the State Court Action was filed and at the time of the filing of this Notice.  
 2 (Cass Decl., ¶ 2.) Thus, Defendant is a citizen of Washington, based on its place of  
 3 incorporation. 28 U.S.C. § 1332(c)(1); *see also Hertz Corp. v. Friend*, 559 U.S. 77,  
 4 85-86 (2010).

5       21. Defendant's corporate headquarters and principal place of business is in  
 6 Seattle, Washington. (Cass Decl., ¶ 2); *see also Hertz*, 559 U.S. at 92-93 (the  
 7 principal place of business is “where a corporation’s officers direct, control, and  
 8 coordinate the corporation’s activities”). Thus, Defendant is also a citizen of  
 9 Washington, based on its principal place of business. 28 U.S.C. § 1332(c)(1).

10       22. No other party has been named or served as of the date of this removal.  
 11 (Huey Decl., ¶ 7.) The presence of Doe defendants in this case has no bearing on  
 12 diversity with respect to removal. *See* 28 U.S.C. § 1441(a) (“[f]or purposes of  
 13 removal under this chapter, the citizenship of defendants sued under fictitious names  
 14 shall be disregarded”).

15       23. Accordingly, the named Plaintiff is a citizen of a State different from  
 16 Defendant, and diversity exists for purposes of CAFA jurisdiction. See 28 U.S.C. §§  
 17 1332(d)(2)(A), 1453.

18                  ***4) The Amount in Controversy Exceeds \$5,000,000<sup>2</sup>***

19       24. Although Defendant denies all liability alleged in the FAC, if damages  
 20 or restitution were awarded on Plaintiff’s claims, the aggregate amount as to the  
 21 putative class would exceed \$5,000,000.<sup>3</sup>

22       25. This Court has jurisdiction under CAFA, which authorizes the removal

23       <sup>2</sup> The alleged damages calculations contained herein are for purposes of removal  
 24 only. Defendant denies that Plaintiff is entitled to any relief whatsoever and  
 25 expressly reserves the right to challenge Plaintiff’s alleged damages in this case.

26       <sup>3</sup> In order to establish the amount in controversy requirement is met, Defendant does  
 27 not concede liability nor is it required to do so. *See Ibarra v. Manheim Investments,*  
*Inc.*, 775 F.3d 1193, 1198 n.1 (9th Cir. 2015) (“Even when defendants have  
 28 persuaded a court upon a CAFA removal that the amount in controversy exceeds \$5  
 million, they are still free to challenge the actual amount of damages in subsequent

1 of class actions in which the amount in controversy for all class members in the  
2 aggregate exceeds \$5,000,000. 28 U.S.C. § 1332(d).

3       26. The removal statute requires that a defendant seeking to remove a case  
4 to federal court must file a notice “containing a short and plain statement of the  
5 grounds for removal.” 28 U.S.C. § 1446(a). The Supreme Court, in *Dart Cherokee*  
6 *Basin Operating Co., LLC v. Owens*, 135 S.Ct. 547 (2014), recognized that “as  
7 specified in §1446(a), a defendant’s notice of removal need include only a plausible  
8 allegation that the amount in controversy exceeds the jurisdictional threshold.” *Id.*  
9 at 81. Supporting evidence is required only if the plaintiff contests, or the court  
10 questions, the allegations of the notice of removal. *Id.* at 89. Otherwise “the  
11 defendant’s amount-in-controversy allegation should be accepted” just as a plaintiff’s  
12 amount-in-controversy allegation is accepted when a plaintiff invokes federal court  
13 jurisdiction. *Id.* at 82.

14       27. Here, Plaintiff’s allegations and claims make evident that he places  
15 more than \$5,000,000 in controversy.

16       28. The FAC asserts fourteen (14) causes of action: 1) failure to pay all  
17 wages including minimum and overtime wages; 2) unpaid meal period premiums; 3)  
18 unpaid rest period premiums; 4) failure to provide recovery periods; 5) failure to  
19 produce wage statements; 6) failure to produce personnel records; 7) failure to  
20 produce signed records; 8) failure to implement heat prevent and maintain legal  
21 temperature controls; 9) failure to provide accurate wage statements; 10) failure to

---

22 proceedings and at trial. This is so because they are not stipulating to damages  
23 suffered, but only estimating the damages that are in controversy.”); *Lewis v. Verizon*  
24 *Communications, Inc.*, 627 F.3d 395, 400 (9th Cir. 2010) (“To establish the  
25 jurisdictional amount, Verizon need not concede liability for the entire amount,  
26 which is what the district court was in essence demanding by effectively asking  
27 Verizon to admit that at least \$5 million of the billings were “unauthorized” within  
28 the meaning of the complaint.”). Moreover, defenses do not affect the amount in  
controversy. See *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 295-  
296 (1938); *Riggins v. Riggins*, 415 F.2d 1259, 1261-1262 (9th Cir. 1969).

1 pay waiting time penalties; 11) failure to reimburse necessary business expenses; 12) 2 violation of California's quota laws; 13) unfair business practices under the Unfair 3 Competition Law ("UCL"); and 14) enforcement of the PAGA. (Huey Decl., ¶ 4, 4 Exh. B, FAC, ¶¶ 57-215.)

5 29. In connection with his claims, Plaintiff seeks several categories of 6 monetary relief, including, *inter alia*, (1) "compensatory damages;" (2) "economic 7 and/or special damages;" (3) "wages;" (4) "premiums" including "split-shift 8 premiums;" (5) "benefits;" (6) "penalties" including "waiting time penalties," 9 "statutory penalties," and "PAGA Civil Penalties;" (7) "reporting time pay;" (8) 10 "liquidated damages;" (9) "unreimbursed expenses;" (10) "restitution;" (11) 11 reasonable attorneys' fees and costs; and (12) prejudgment interest and costs. (Huey 12 Decl., ¶ 4, Exh. B, FAC, Prayer.)

13 30. Alleging a UCL violation extends the statute of limitations on Plaintiff's 14 wage and hour claims from three to four years from the filing of the Complaint, or 15 going back to September 23, 2020. *See Cal. Bus. & Prof. Code § 17208; Cortez v.* 16 *Purolater Air Filtration Products Co.*, 23 Cal. 4th 163, 178-79 (2000) (four-year 17 statute of limitations for restitution of wages under the UCL).

18 i. Plaintiff's First Cause of Action for Failure to Pay All  
 19 Wages Including Minimum and Overtime Wages Places  
 20 \$2,194,215 in Controversy

21 31. By way of his first cause of action, Plaintiff and the putative class seek 22 allegedly unpaid wages at minimum, regular, overtime, and double-time wage rates, 23 as well as non-discretionary bonuses, sick pay, and vacation pay, pursuant to 24 California Labor Code sections 204, 206, 227.3, 510, 1182.12, 1194, 1194.2, 1197, 25 and 1198. (FAC, ¶¶ 53-73.) Plaintiff alleges that he and the putative class members 26 incurred unpaid compensation because Defendant failed to compensate them for all 27 hours worked at the correct legal rates, including the correct minimum wage, 28 overtime and double overtime rate, premium wages, sick pay, and vacation pay when

1 Defendant paid bonuses. (*Id.*) However, Plaintiff does not state the amount of unpaid  
2 regular and overtime hours he and the putative class allegedly worked each week.

3       32. Between September 23, 2020 (4 years prior to the date Plaintiff filed his  
4 Complaint) through February 24, 2025, Defendant employed approximately 238 non-  
5 exempt workers in the state of California. These 238 non-exempt employees worked  
6 approximately 27,696 work weeks, and their average hourly rate of pay was  
7 approximately \$26.49. (Cass Decl., ¶ 4.)

8       33. If Plaintiff prevails on his claim for regular wages, he and the putative  
9 class may be entitled to recovery of all unpaid wages. Moreover, to determine the  
10 monetary amount in controversy for Plaintiff's overtime claim, the total number of  
11 unpaid hours worked by Plaintiff and the putative class that would have been  
12 considered overtime or double-overtime hours is multiplied by one and one-half or  
13 two times their respective regular rates of pay rate. *See* Lab. Code § 510.

14       34. Plaintiff does not allege a specific amount of damages for this cause of  
15 action, but asserts that Defendant "failed to pay Plaintiff and Class Members all non-  
16 discretionary bonuses and wages (including minimum, regular, overtime, and  
17 double-time wages) for all hours worked." (FAC, ¶ 58.) Plaintiff alleges that  
18 Defendant "rounded, edited, and/or input the incorrect times for Plaintiff" and Class  
19 Members' start times" and "also rounded Plaintiff" and Class Members' end time"  
20 resulting in "Plaintiff and Class Members perform[ing] work off-the-clock without  
21 compensation." (FAC, ¶ 50.) Plaintiff also alleges that Plaintiff and the putative  
22 class members "regularly worked in excess of eight (8) hours in a workday and/or 40  
23 hours in a workweek and/or in excess of 12 hours in a workday." (FAC, ¶ 49.) The  
24 foregoing indicates more than a rare or sporadic violation rate. Even taking an  
25 extremely conservative approach of one hour of regular wages and one hour of one  
26 and one-half times overtime wages per workweek, Plaintiff's regular wages claim  
27 places at least **\$733,667** into controversy (\$26.49 x 1 hour per week x 27,696  
28 workweeks) and his overtime claim places at least **\$1,100,500** into controversy

( $\$26.49 \times 1$  hour per week  $1.5$  overtime rate  $\times 27,696$  workweeks).

35. Further, Plaintiff seeks liquidated damages under Labor Code section 1194.2 for Defendant's alleged failure to pay minimum wages to putative class members (FAC, ¶ 73). If he prevails, liquidated damages may be awarded in the amount equal to the unpaid minimum wages. Starting from January 1, 2020, the California state minimum wage has been at least \$13 per hour.<sup>4</sup> Taking the same conservative approach of one hour of unpaid minimum wage per week per employee, Plaintiff seeks to recover another **\$360,048** from this action (\$13 x 1 hour per week x 27,696 workweeks).

36. In sum, although Defendant vigorously denies Plaintiff's allegations, including the alleged damages, if Plaintiff was to prevail on his unpaid wages claim with respect to himself and the putative class, the amount in controversy for this claim alone would be **\$2,194,215**.

ii. Plaintiff's Second, Third and Fourth Causes of Action for Failure to Provide Meal, Rest and Recovery Periods Places \$6,603,003 in Controversy

37. Plaintiff's second, third and fourth causes of action allege that Defendant never provided Plaintiff or the putative class members with a meal, rest, or recovery period that complied with California law and never paid them meal, rest, and recovery period premium payments. Specifically, Plaintiff alleges that Defendant "failed to provide Plaintiff and Class Members will all required meal periods, including second meal periods." (FAC, ¶ 79.) He similarly alleges that Defendant "failed to provide Plaintiff and Class Members with all required rest periods, including second and third rest periods." (FAC, ¶ 88.) Plaintiff also alleges that due to Defendant's "uniform policies and practices, Plaintiff and Plaintiff [sic] Class consistently worked without receiving a duty-free, uninterrupted recovery

<sup>4</sup> [https://www.dir.ca.gov/dlse/faq\\_minimumwage.htm](https://www.dir.ca.gov/dlse/faq_minimumwage.htm)

period as required by the Labor Code.” (FAC, ¶ 96.) Plaintiff further alleges that Defendant failed to pay Plaintiff and the putative class members meal, rest, and recovery period premium payments when due. (FAC, ¶¶ 80, 89, 96.)

38. Labor Code section 226.7 provides that an employer who fails to provide a 30-minute meal period for every five hours worked, a 10-minute rest break for every four hours worked or major fraction thereof, or recovery periods can be liable for up to one meal period premium, one rest break premium, and one recovery period premium per workday. Lab. Code § 226.7. Meal, rest, and recovery break premiums are equivalent to one hour of the employee's regular rate of compensation.

*Id.*

39. These causes of action dramatically increase the amount in controversy in this case. Read together, the FAC alleges that Defendant never provided Plaintiff or the putative class members with a compliant meal or rest period and never paid them premium payments. Those allegations justify maximum, 100% violation rates. Regardless, even a conservative interpretation of three (3) missed meal periods per week, three (3) missed rest breaks per week, and three (3) missed recovery periods per week places at least \$6,603,003 into controversy. Specifically, three (3) unpaid meal period premiums per week places \$2,201,001 in controversy (27,696 workweeks x 3 violations per week x \$26.49 per hour), three (3) unpaid rest break premiums per week represents another \$2,201,001, and three (3) unpaid recovery break premiums per week represents another \$2,201,001, for a total of **\$6,603,003**.

iii. Plaintiff's Ninth Cause of Action for Failure to Provide Accurate Itemized Statements Places \$576,000 in Controversy

40. Labor Code Section 226(a) provides that employers must, at the time of payment of wages, issue itemized wage statements which reflect nine (9) enumerated categories of information, including gross wages earned, total hours worked, deductions, net wages earned, inclusive dates of the pay period, name of the

employee and name and address of the legal entity that is the employer.

41. Section 226(e) provides for a statutory penalty for violations of Labor Code section 226(a)'s wage statement requirements of \$50 or actual damages per employee for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not exceeding an aggregate amount of \$4,000. Lab. Code § 226(a). The statutory period for Labor Code section 226(e) penalties is one year. Cal. Code Civ. Proc. § 340.

42. In his ninth cause of action, Plaintiff alleges that Defendant “failed to comply with Labor Code section 226(a) on wage statements that were provided to Plaintiff and Class Members.” (FAC, ¶ 143.) Plaintiff’s wage statement claim is predicated in part on his unpaid wage and meal and rest break claims. The FAC expressly incorporates allegations related to Plaintiff’s unpaid wage and meal and rest break claims into his ninth cause of action. (FAC, ¶ 139 [“Plaintiff hereby re-allege [sic] and incorporate [sic] by reference all paragraphs above as though fully set forth herein.”].) Additionally, Plaintiff contends that the wage statements were not accurate and complete because they did not include total hours worked (e.g. off-the-clock work), gross wages earned (e.g. off-the-clock work and work during meal and rest periods), and all applicable hourly rates (e.g. meal period premium rates). (FAC, ¶ 143.) Accordingly, Plaintiff alleges that a wage statement violation occurred in each pay period worked by putative class members during the statute of limitations period.

43. From September 23, 2023 through February 24, 2025, Defendant employed 144 non-exempt hourly workers. (Cass Decl., ¶ 5.) Even assuming that all of the putative class members have reached the maximum penalty cap of \$4,000 each and are not eligible to accrue any further penalties, Plaintiff places at least **\$576,000** into controversy (144 employees x \$4,000).

iv. Plaintiff's Tenth Cause of Action for Failure to Pay Final Wages Places \$514,965 in Controversy

44. Plaintiff also alleges a claim for failure to pay wages upon separation of employment under California Labor Code sections 201, 202, and 203, which has a maximum statutory penalty of 30 days of wages per affected employee. The statute of limitations for a wage action is three years. *See* Cal. Code Civ. Proc. § 338.

45. Because waiting time penalties can arise with any willful failure to pay wages, and Plaintiff alleges that he and the separated putative class members were not paid “all their earned wages upon termination including, but not limited to, minimum, regular, overtime, and double time compensation, and premium compensation,” even minute amounts of unpaid wages could give rise to waiting time penalties under Plaintiff’s allegations. (FAC, ¶ 153.) See Lab. Code § 203.

46. Here, there are approximately 81 non-exempt, hourly employees in California whose employment with Defendant ceased within the three-year statute of limitations. (Cass Decl., ¶ 5.) Thus, assuming that each of these employees seek the maximum statutory penalty of 30 days of wages per employee, and using the average hourly rate of pay of \$26.49 (*see* Cass Decl. ¶ 4), the amount in controversy for Plaintiff's and the putative class's waiting time penalties claim alone would be **\$514,965** (81 terminated employees x 30 days x 8 hours x \$26.49 per hour).

v. Plaintiff's Eleventh Cause of Action for Failure to Reimburse Business Expenses Places \$138,480 in Controversy

47. Further, Plaintiff alleges that Defendant violated California Labor Code section 2802 by failing to “reimburse Plaintiff and Class Members for [business] expenses” that they were “required to incur . . . as a condition of and in the discharge of their employment duties . . .” including “expenses associated with the purchase of equipment.” (FAC, ¶¶ 156-58.)

48. From September 23, 2020 to February 24, 2025, the non-exempt employees worked approximately 27,696 workweeks. (Cass Decl. ¶ 4.) Assuming for purposes of removal that Plaintiff and the putative class members are entitled to

recover \$5 per workweek for the purchase of tools and other work-related expenses, the amount in controversy for this claim would be another **\$138,480** (\$5 per week x 27,696 workweeks).

vi. Plaintiff's Request for Attorney's Fees Places Another \$2,506,666 in Controversy

6       49. Finally, Plaintiff seeks reasonable attorneys' fees, which must also be  
7 considered in determining whether the jurisdictional limit is met. (FAC, Prayer,  
8 section p.) "Where an underlying statute authorizes an award of attorneys' fees,  
9 either with mandatory or discretionary language, such fees may be included in the  
10 amount in controversy." *Lowdermilk v. U.S. Bank National Ass'n*, 479 F.3d 994,  
11 1000 (9th Cir. 2007) (citing *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1155-56  
12 (9th Cir. 1998)). The Ninth Circuit has "long held . . . that attorneys' fees awarded  
13 under fee-shifting statutes or contracts are included in the amount in controversy."  
14 *Arias v. Residence Inn by Marriott*, 936 F.3d 920, 927 (9th Cir. 2019); *see also*  
15 *Fritsch v. Swift Transp. Co. of Ariz., LLC*, 899 F.3d 785, 794 (9th Cir. 2018).  
16 Accordingly, future attorney's fees are properly included in calculating the amount  
17 in controversy for CAFA removal. *Id.*

18       50. In California, it is not uncommon for an attorneys' fee award to be  
19 twenty-five to thirty percent of the total recovery in a class action. Even at 25%,  
20 Plaintiff places another approximately **\$2,506,666** into controversy.

vii. Plaintiff Places at Least \$12,533,330 into Controversy in Total

23       51. Although Defendant denies that Plaintiff and the putative class are  
24 entitled to any relief, accepting Plaintiff's claims as true, it is more likely than not  
25 that the amount in controversy in this case exceeds **\$12,533,330**:

27	Unpaid Regular and Overtime Wages and Liquidated	\$2,194,215
28	Damages	

1	Failure to Provide Meal, Rest, and Recovery Breaks	\$6,603,003
2	Failure to Provide Accurate Itemized Statements	\$576,000
3	Failure to Pay Wages at Termination	\$514,965
4	Unreimbursed Business Expenses	\$138,480
5	Attorneys' Fees	\$2,506,666
6	<b>Total</b>	<b>\$12,533,330</b>
7		

8        52. Based on the allegations in Plaintiff's FAC, the \$5 million jurisdictional  
 9 amount requirement of CAFA is met.

10      53. Defendant provides the foregoing calculations only to demonstrate that  
 11 the amount in controversy here easily exceeds the amount in controversy requirement  
 12 of CAFA. Defendant makes no admission of any liability or damages with respect  
 13 to any aspect of this case, nor does it endorse or concede that the proffered  
 14 methodology for such calculations passes muster.

15      **B. Federal Question Jurisdiction - Section 301 of the Labor Management  
 16 Relations Act**

17      54. This action is a putative class action of which this Court has original  
 18 jurisdiction under 28 U.S.C. section 1331 based upon the existence of a federal  
 19 question, and is one which may be removed to this Court pursuant to the provisions  
 20 of 28 U.S.C. section 1441(a) because it arises under Section 301(a) of the LMRA, 29  
 21 U.S.C. section 185(a).

22      55. Section 301 of the LMRA provides federal jurisdiction over "suits for  
 23 violation of contracts between an employer and a labor organization." 29 U.S.C. §  
 24 185(a). Section 301 preempts "claims founded directly on rights created by  
 25 collective bargaining agreements, and also claims which are substantially dependent  
 26 on analysis of a collective bargaining agreement." *Paige v. Henry J. Kaiser Co.*, 826  
 27 F.2d 857, 861 (9th Cir. 1987), *cert. denied*, 486 U.S. 1054 (1988) (*citing Caterpillar  
 28 Inc. v. Williams*, 482 U.S. 386, 107 S. Ct. 2425, 2431 (1987).) "The preemptive force

1 of section 301 is so powerful as to displace entirely any state claim based on a  
 2 collective bargaining agreement, and any state claim whose outcome depends on  
 3 analysis of the terms of the agreement.” *Young v. Anthony’s Fish Grottos, Inc.*, 830  
 4 F.2d 993, 997 (9th Cir. 1987) (citations omitted).

5       56. As the Ninth Circuit has noted, “[a]lthough the language of § 301 [of  
 6 the LMRA] is limited to ‘suits for violation of contracts,’ it has been construed quite  
 7 broadly to cover most state-law actions that require interpretation of labor  
 8 agreements.” *Associated Builders & Contrs. v. Local 302 IBEW*, 109 F.3d 1353,  
 9 1356-1357 (9th Cir. 1997) (*citing Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 220  
 10 (1985) (“When resolution of a state-law claim is substantially dependent upon  
 11 analysis of the terms of an agreement made between the parties in a labor contract,  
 12 that claim must either be treated as a § 301 claim, or dismissed as preempted by  
 13 federal labor-contract law.”)).

14       57. Thus, state law causes of action whose outcome depends on analysis of  
 15 the terms of a collective bargaining agreement are preempted by Section 301 of the  
 16 LMRA. *Young*, 830 F.2d at 997, 999. If evaluation of a claim is inextricably  
 17 intertwined with consideration of the terms of the labor contract, it is preempted and  
 18 may be removed to federal court. *Id.* These claims must be recharacterized as LMRA  
 19 Section 301 claims and, as such, are removable to federal court. *Associated Builders*  
 20 & *Contractors, Inc. v. Loc. 302 Int'l Bhd. of Elec. Workers*, 109 F.3d 1353, 1356 (9th  
 21 Cir. 1997), *opinion amended and superseded*, No. 95-16202, 1997 WL 236296 (9th  
 22 Cir. Mar. 27, 1997); *Young*, 830 F.3d at 997, 1002.

23       58. “[T]he policy in favor of national uniformity in labor law is so powerful  
 24 that it displaces state law with respect to claims involving the interpretation or  
 25 enforcement of collective bargaining agreements.” *Associated Builders*, 109 F.3d at  
 26 1356 (citing *Lingle v. Norge Div. of Magic Chef, Inc.*, 486 U.S. 399, 404 (1988)).  
 27 Such a policy “authoriz[es] the development of federal common-law rules of  
 28 decision, in large part to assure that agreements to arbitrate grievances would be

1 enforced, regardless of the vagaries of state law and lingering hostility toward  
2 extrajudicial dispute resolution.” *Id.* at 1356 (citing *Livadas v. Bradshaw*, 512 U.S.  
3 107, 114 S. Ct. 2068, 2077 (1994)).

4 59. Here, the outcome of the causes of action alleged by Plaintiff depends  
5 on the analysis of the terms of several collective bargaining agreements (“CBAs”)  
6 that members of the putative class are subject to (the “Union Members”). As such,  
7 Plaintiff’s claims are LMRA Section 301 claims and removable to federal court.

8 60. The FAC’s failure to acknowledge the CBAs or Union Members does  
9 not preclude federal question jurisdiction.

10 61. Generally, whether removal jurisdiction exists must be determined by  
11 reference to the “well-pleaded complaint.” *Merrell Dow Pharm., Inc. v. Thompson*,  
12 478 U.S. 804, 808, (1986). However, under the “artful pleading” doctrine, an  
13 exception to the well-pleaded complaint rule, a plaintiff cannot defeat removal of a  
14 federal claim by disguising or pleading it artfully as a state law cause of action. The  
15 “artful pleading” doctrine applies to state claims that are completely preempted by  
16 federal law. *See Caterpillar*, 482 U.S. at 393 (“Once an area of state law has been  
17 completely preempted, any claim purportedly based on that pre-empted state law is  
18 considered, from its inception, a federal claim, and therefore arises under federal  
19 law”); *see also Milne Employees Ass’n v. Sun Carriers, Inc.*, 960 F.2d 1401, 1406  
20 (9th Cir. 1991) (plaintiff “cannot avoid removal by ‘artfully pleading’ only state law  
21 claims that are actually preempted by federal statutes”). If the claim arises under  
22 federal law, the federal court will re-characterize it and uphold removal. *Federated  
23 Dept. Stores, Inc. v. Moitie*, 452 U.S. 394, 398 n. 2 (1981).

24 62. Accordingly, it does not matter that Plaintiff has pled his claims to omit  
25 any reference to any CBA. Preemption is determined by the substance of the claim  
26 and not its characterization in the FAC. “Mere omission of reference to Section 301  
27 in the complaint does not preclude federal subject matter jurisdiction.” *Fristoe v.*  
28

1      *Reynolds Afetals Co.*, 615 F.2d 1209, 1212 (9th Cir. 1990).

2            63. The Ninth Circuit has articulated a two-part test to determine whether a  
3 cause of action is preempted by the LMRA. *Burnside v. Kiewit Pac. Corp.*, 491 F.3d  
4 1053, 1059 (9th Cir. 2007). First, the court must determine if the asserted cause of  
5 action involves a right conferred upon an employee by virtue of state law,  
6 independent of a CBA. *Id.* at 1060. If the right exists solely because of the CBA,  
7 then the claim is preempted, and analysis ends. *Id.* Second, if the right exists  
8 independently of the CBA, the court must then consider whether resolving the dispute  
9 is nevertheless “substantially dependent on [the] analysis of a collective-bargaining  
10 agreement.” *Id.* If such dependence exists, then the claim is preempted by section  
11 301; if not, then the claim is left to state courts to handle in accordance with state  
12 law. *Id.*

13            64. When determining whether resolution of a state claim requires  
14 interpretation of a collective bargaining agreement, the court must “examin[e] the  
15 terms of the agreement, the elements of the [claim] involved . . . and the facts which  
16 the defendant may assert in defense.” *Moreau v. San Diego Transit Corp.*, 210 Cal.  
17 App. 3d 614, 624 (1989), relying in part on *Hanks v. General Motors Corp.*, 859 F.2d  
18 67, 70 (8th Cir. 1988) (Defendant's affirmative defenses must be considered in  
19 determining whether the collective bargaining agreement must be interpreted in order  
20 to resolve the state law claim).

21            65. Here, Plaintiff alleges that he brings his claims on behalf of “himself  
22 and all others similarly situated . . .” (FAC, ¶ 22.) The proposed class is defined as:

23                All current and former non-exempt employees employed by Defendants  
24 in the State of California within four years prior to the filing of this  
25 action to the date of class certification.

1 (FAC, ¶ 30.)

2           ***1) The Court Must Analyze Defendant's CBAs to Determine***  
 3           ***Whether Union Members Are Exempt From Statutory Overtime***  
 4           ***Provisions Under Labor Code Section 514***

5         66. Labor Code section 514 exempts California employees from  
 6 California's overtime pay requirements set forth in Labor Code section 510. To fall  
 7 under the exemption, the following requirements must be met: (1) the employee must  
 8 be covered by a "valid" CBA; (2) the CBA must "expressly provide[] for wages,  
 9 hours of work, and working conditions of the employees"; (3) the CBA must provide  
 10 premium wage rates for all overtime hours worked; and (4) the CBA must provide a  
 11 regular hourly rate of pay of not less than 30 percent more than the state minimum  
 12 wage. Lab. Code § 514. When an analysis of the CBA is required, Section 301 of  
 13 the LMRA preempts state law overtime claims. *Firestone v. Southern Calif. Gas*  
 14 Co., 219 F.3d 1063, 1066 (9th Cir. 2000); *Hall v. Live Nation Worldwide, Inc.*, 145  
 15 F.Supp.3d 1187, 1203-04 (C.D. Cal. 2015); *Coria v. Recology, Inc.*, 63 F.Supp.3d  
 16 1093, 1099-1100 ("this is a case that does fall under the exemption provided by  
 17 California Labor Code Section 514, and plaintiff's overtime claim also cannot be said  
 18 to be based on a state law right to overtime under California Labor Code Section  
 19 510" and is therefore preempted under Section 301).

20         67. At all times relevant to the FAC, Defendant was a party to at least six  
 21 (6) separate CBAs that covered California employees. (Cass Decl., ¶¶ 6-12, Exs. A-  
 22 F.) The CBAs apply to hourly employees who provide services at Defendant's  
 23 Fontana, Long Beach and Santa Clarita facilities. (*Id.*) Each CBA contains specific  
 24 provisions related to Union Members' wages, some of which can vary depending on  
 25 the employees' duration of employment. (*Id.*) The CBAs also contain compensation  
 26 provisions related shift differentials, minimum pay, call provisions, overtime work,  
 27 weekend work and holiday pay. (*Id.*) Many of the employees Plaintiff seeks to  
 28 represent as putative class members were subject to one of the six (6) separate CBAs

1 in effect. (*Id.*)

2 68. Plaintiff's overtime claims asserted on behalf of the Union Members are  
3 dependent on the Court's analysis of each of the CBA, and each CBA's respective  
4 provisions related to wages, hours of work, working conditions, work schedules,  
5 overtime, shift differentials and rates of pay. For example, the CBA covering the  
6 Fontana facility between February 1, 2017 and January 31, 2021 (the "Fontana 2017  
7 CBA") provides for a shift differential of \$.75/hr for employees who work a majority  
8 of their hours between 2:00 p.m. and 4:59 a.m. (Cass Decl., ¶ 7, Ex. A at Art. IV,  
9 Sec. 1.) The Fontana 2017 CBA further provides for double straight-time rate to be  
10 paid for all work performed on Sundays, regardless of the number of hours worked  
11 during the workweek, one and one-half time the regular rate for all hours worked on  
12 a recognized holiday, or double straight time for certain holidays, ***in addition to***  
13 holiday pay. (*Id.* at Art. VI, Sec. 3, 5 and 6.) The Fontana 2017 CBA also provides  
14 for "time and one-half" for the sixth and seventh day of a Fontana employee's work  
15 week, and double-time for any work on the seventh consecutive day of the  
16 employee's work week. (*Id.* at Art. VI, Sec. 2.) Article V of the Fontana 2017 CBA  
17 provides for reporting pay, and minimum pay for an employee who reports to work  
18 but leaves early. (*Id.* at Art. V.) The amount an employee is paid depends on the  
19 reason the work day is cut short. (*Id.*) This is just one CBA, which requires in-depth  
20 and complex analysis to determine if the statutory overtime provisions apply, if at  
21 all. Each of the remaining five CBAs require the same, additional and different  
22 analysis. For example, the four CBAs that are applicable to the Long Beach and  
23 Santa Clarita facilities permit variable and/or alternative workweek schedules. (*Id.*  
24 at ¶¶ 10-13, Exs. C-F.)

25 69. Defendant asserts all requirements of the exemption to the application  
26 of overtime wage requirements provided by Labor Code Section 514 are met for  
27 Union Members who were and/or are covered by one of the six CBAs.

28 70. Each of the CBAs are valid, and expressly provide for wages, hours of

1 work, and working conditions of the Union Members. (Cass Decl., ¶¶ 6-12, Exs. A-  
2 F.)

3 71. Each of the CBAs provide for a premium wage rate for all overtime  
4 hours worked. (*Id.*)

5 72. In addition, each CBA provides for an effective hourly rate of pay that  
6 is not less than 30 percent more than the state minimum wage. (*Id.*) New hires may  
7 be subject to different hourly rates up until they complete their first year of  
8 employment with Defendant, after which point, they would earn the effective hourly  
9 rate. (*Id.*)

10 73. Accordingly, California's statutory overtime requirements are  
11 inapplicable and instead modified and controlled by the applicable CBAs. *Buck v.*  
12 *Cemex*, 2013 WL 4648579, at \*7 (E.D. Cal. Aug. 29, 2013).

13 74. By predicating his class action on overtime claims under California law,  
14 Plaintiff implicitly disputes that the terms of the CBAs meet the requirements of the  
15 Section 514 overtime exemption, thereby necessitating the Court's analysis and  
16 interpretation of the applicable CBAs to determine whether each meets the exemption  
17 requirements set forth in Section 514. Thus, Plaintiff's claim is substantially  
18 dependent on the Court's analysis of the six CBAs applicable to many putative class  
19 members. As an initial matter, the Court must determine that each of the CBAs at  
20 issue is "valid." This will require a thorough examination of the terms of each CBA.  
21 Next, the Court must determine whether the CBAs contain express provisions for the  
22 "wages, hours of work, and working conditions of the employees." Lab. Code § 514.  
23 Several courts have held that claims are preempted by the LMRA if they require an  
24 analysis of the CBA to determine the applicability of a Labor Code exemption. See  
25 e.g. *Raphael v. Tesoro Ref. & Mktg. Co. LLC*, 2015 WL 3970293, at \*5 (C.D. Cal.  
26 June 30, 2015) (finding LMRA preemption because "to resolve [plaintiff's] claims it  
27 will be necessary to interpret the relevant CBAs to determine whether the disputed  
28 provision satisfies the requirements of a meal period exemption); *Mireles v. Paragon*

1      *Systems Inc.*, 2013 WL 3450090, at \*3 (S.D. Cal. July 9, 2013) (where plaintiffs  
2 contended that a CBA was inadequate under the terms of Labor Code section 512(e)  
3 because it did not provide for overtime wages, the Court stated that the plaintiffs'  
4 reasoning thus "rests on an interpretation of the CBAs"); *Buck*, 2013 WL 4648579,  
5 at \*6.

6      75. Because interpretation and analysis of the CBAs are imperative to  
7 determine whether the Union Members are (or are not) exempted by Labor Code  
8 section 514 from the general overtime provisions of California statutory law, these  
9 claims are preempted by the LMRA and the Court has federal question jurisdiction.

10     ***2) Plaintiff's Claims Are Substantially Dependent on the Court's  
11 Analysis and Interpretation of the Six CBAs***

12     76. Even if the Union Members were not exempt from the overtime  
13 requirements of the Labor Code, which Defendant disputes, there is no question that  
14 the resolution of Plaintiff's claims would remain substantially dependent upon and  
15 require an interpretation of various provisions of the six CBAs. *Caterpillar*, 482 U.S.  
16 at 394 (holding section 301 preempts state law claims that are "substantially  
17 dependent" on an analysis of a collective bargaining agreement); *Firestone*, 219 F.3d  
18 at 1066 (finding LMRA preemption where interpretation of the collective bargaining  
19 agreement was necessary to determine the plaintiffs' regular rate for overtime  
20 claims). To resolve Plaintiff's claims, the Court will still need to determine the  
21 regular rate of pay to calculate the regular rate for purposes of overtime. Calculating  
22 when overtime would apply and at what rate will require more than merely referring  
23 to the collective bargaining agreement; it will require a complex analysis of the terms  
24 of the various CBAs.

25     77. For example, in the CBA covering warehouse person employees of the  
26 Santa Clarita facility between 2018 and 2022 (the "SC 2018 CBA"), alone, there are  
27 numerous provisions that will alter a Union Member's regular rate of pay and  
28 therefore require analysis and interpretation by the Court. (Cass Decl., ¶ 11, Ex. E.)

1 Some examples of terms and provisions from the CBA that are substantially  
2 dependent upon an analysis and interpretation by the Court include, but are not  
3 limited to, the following:

- 4 a. In Exhibit “A”, the SC 2018 CBA provides for a different hourly rate of  
5 pay for new hires, who may be deemed to be “experienced” or  
6 “inexperienced” employees. If experienced, after six months, the  
7 employees’ rate “will be increased by one-half (1/2) the difference of the  
8 new hire rate and warehouse person.” However, if the new hire is  
9 inexperienced, their rate only increased by “one-third (1/3) the difference  
10 between the new hire rate and warehouse person,” after six months, and  
11 then is increased against six months “thereafter . . . until the employee  
12 reaches the top of the ‘Warehouse “person’ classification.” Employees  
13 who are assed as lead are also provided with a \$1.50 per hour “differential  
14 above the rate of ‘Warehouse Person.’” These terms of the SC 2018 CBA  
15 must be analyzed and interpreted by the Court to determine the definition  
16 of “experienced” and “inexperienced” to determine whether the employee  
17 should receive a one-half increase or one-third increase after the initial six-  
18 months of employment.
- 19 b. Section 3, subsection (a) further provides for regular or variable work time.  
20 It provides that “Five (5) Days shall constitute a regular work week,  
21 Monday thru Friday,” and may start any time between 4:00 a.m. and 10:00  
22 a.m., which may be changed so long as notice is given by Thursday of the  
23 prior week to the affected employee. Thus, the Court must analyze and  
24 interpret this provision as applied to each work week of each affected  
25 employee to determine the appropriate work week, so as to correctly  
26 determine the number of overtime hours worked, if any.
- 27 c. Section 3, subsection (b) states that any work done on the seventh day of  
28 work will be paid “at the rate of double time, except that such work as may

1           be necessary in order to facilitate the emergency arrival of material may be  
2           done on Sundays at time and one-half the regular hourly rate of pay for the  
3           first eight (8) hours of such work performed.” This provision requires  
4           complex analysis and interpretation by the Court to determine (amongst  
5           other things): (1) whether any given day is properly found to be the seventh  
6           day of work, depending on the variable work week applied pursuant to  
7           Section 3(a); (2) whether any work was “necessary”; (3) whether any work  
8           done was for the purpose of facilitating “the emergency arrival of material;”  
9           and (4) whether the phrase “regular hourly rate of pay” is synonymous with  
10          “regular rate.”

- 11           d. Section 3, subsection (c) provides for different rates of pay for additional  
12           shifts. For example, it states “[t]he Employer may schedule a second shift  
13           (a shift starting at 3:00PM or after), or a third shift (a shift starting at  
14           11:00PM or after) upon 7 days advance notice.” The Court must determine  
15           how this provision is reconciled with Section 3(a), which permits the  
16           Employer to change the regular work day with appropriate notice.
- 17           e. The Court must also analyze and interpret the meaning of Section 3(c),  
18           which provides that when any additional shift “fails to work a full calendar  
19           week, weather permitting, all such time as is worked shall be at the overtime  
20           rate.” The meaning of this phrase and its applicability is necessary for  
21           determining when any overtime rate may apply.
- 22           f. Section 3(c) further states any extra shifts are completed “without overtime  
23           penalty” if they are “started on a day before a holiday or on Friday.” Again,  
24           the Court must determine whether the timing contemplated in this Section  
25           applies, dependent on any notice given for an alternative workweek  
26           schedule, pursuant to Section 3(a).
- 27           g. Section 3, subsection (d) further permits Defendant to implement an  
28           alternative workweek for any group of employees, with modifications as

1                   provided by the SC 2018 CBA. The Court will need to interpret whether  
 2                   this provision applies to any putative class member, and its effect on any  
 3                   alleged overtime worked.

4                   h. Section 3, subsection (d)(3) also provides for 10 hours' of pay to be paid  
 5                   for an employee whose work day falls on a holiday. The Court would need  
 6                   to interpret this provision to determine, among other things: (1) whether the  
 7                   employee is appropriate subject to an alternative work schedule as provided  
 8                   by the CBA; (2) whether the holiday pay is in addition to pay for hours  
 9                   worked; and, (3) if the pay is not in addition to pay for hours worked,  
 10                  whether the employee is restricted to work only the 10 hours, or how pay  
 11                  would be handled for any hours worked in excess of 10.

12                  (*Id.*)

13                  78. These and other questions are presented by each of the six applicable  
 14                  CBAs impacting Union Members. A rigorous interpretation and analysis of each  
 15                  CBA is necessary to evaluate Plaintiff's overtime, and, accordingly, Plaintiff's  
 16                  derivative wage statement and final wages claims.

17                  79. Accordingly, the Union Members' claims are substantially dependent  
 18                  upon an analysis and interpretation of these provisions to determine whether  
 19                  Defendant improperly failed to pay Union Member's overtime pay and the value of  
 20                  any alleged damages. As such, these claims are preempted by Section 301. *Raphael*,  
 21                  2015 WL 3970293, at \*7; *Coria*, 63 F. Supp. 3d at 1098-1100. See also, *Paige*, 826  
 22                  F.2d at 861; *Levy v. Skywalker Sound*, 108 Cal. App. 4th 753, 768-769 (2003) (claim  
 23                  for unpaid wages under California Labor Code section 204 was preempted by Section  
 24                  301); *Buck*, 2013 WL 4648579 at \*7 (denying motion to remand on the basis of  
 25                  preemption under section 301 when Labor Code sections 512(e) and 514 were  
 26                  involved).

27                  **C. Supplemental Jurisdiction**

28                  80. Under 28 U.S.C. § 1367(a), "district courts shall have supplemental

1 jurisdiction over all other claims that are so related to claims in the action within such  
2 original jurisdiction that they form part of the same case or controversy under Article  
3 III of the United States Constitution.” State-law claims are part of the “same case” as  
4 federal claims when they “derive from a common nucleus of operative fact and are  
5 such that a plaintiff would ordinarily be expected to try them in one judicial  
6 proceeding.” *Kuba v. I-A Agricultural Ass’n*, 387 F.3d 850, 855 (citation omitted);  
7 see also *Coria v. Recology, Inc.*, 63 F. Supp. 3d 1093, 1098 (N.D. Cal. 2014) (taking  
8 supplemental jurisdiction of derivative claims that were “inextricably intertwined”  
9 with preempted claims).

10       81. Here, Plaintiff’s PAGA and other remaining state-law claims arise from  
11 the same arise from the same alleged employment policies and practices by  
12 Defendant, including failure to pay wages and provide required compensation. These  
13 claims share a common nucleus of operative fact with Plaintiff’s class claims under  
14 CAFA and federal law claims under the LMRA. Because they are factually and  
15 legally intertwined, they properly fall within the Court’s supplemental jurisdiction.  
16 See *Thompson v. Target Corp.*, No. EDCV 16-00839 JGB (MRWx), 2016 U.S. Dist.  
17 LEXIS 101363, at \*12 (C.D. Cal. Aug. 2, 2016) (concluding that “given that the  
18 Court finds it has original jurisdiction over Plaintiff’s class claims under CAFA, the  
19 Court may exercise supplemental jurisdiction over Plaintiff’s PAGA claims.”);  
20 *Blackwell v. Commercial Refrigeration Specialists, Inc.*, 2021 WL 2634501, at \*1,  
21 4-6 (E.D. Cal. June 25, 2021) (taking supplemental jurisdiction over the remaining  
22 PAGA action based on rest breaks, minimum wages, wage statements, and expense  
23 reimbursement where the overtime and meal period portion of the PAGA action was  
24 preempted under Section 301); *Jimenez v. Young’s Market Company, LLC*, 2021 WL  
25 5999082, at \*1, 7, 13 (N.D. Cal. Dec. 20, 2021) (taking supplemental jurisdiction of  
26 portion of PAGA claims involving minimum wages and rest periods where the part  
27 of the PAGA claims regarding overtime and meal periods were preempted under  
28 Section 301); *Rodriguez v. Sukut Construction, Inc.*, 2022 WL 17547526, at \*1, 8

1 (E.D. Cal. Dec. 9, 2022) (same); *Nettles v. Paramedics Logistics Operating*  
 2 *Company, LLC*, 2022 WL 137631, at \*1 (N.D. Cal. Jan. 14, 2022) (same).

3       82. Moreover, none of the four categories under 28 U.S.C. § 1367(c)  
 4 warrant discretionary remand of the PAGA claim. The PAGA claim does not raise  
 5 “a novel or complex issue of State law” or “substantially predominate[] over the  
 6 claim or claims over which the district court has original jurisdiction.” 28 U.S.C. §  
 7 1367(c)(1), (2). Nor has this Court or the State Court dismissed all causes of action  
 8 over which this Court has original jurisdiction under CAFA. 28 U.S.C. § 1367(c)(3).  
 9 Further, there are no other “exceptional circumstances ... for declining jurisdiction.”  
 10 28 U.S.C. § 1367(c)(4).

11       83. Because Plaintiff’s PAGA claim is entirely derivative of the class claims  
 12 that establish CAFA jurisdiction, this Court should exercise supplemental  
 13 jurisdiction over the PAGA claim and retain the case in federal court.

14       **V. VENUE**

15       84. Venue lies in the United States District Court for the Eastern District of  
 16 California pursuant to 28 U.S.C. §§ 84(c), 1441(a), and 1446(a). Plaintiff originally  
 17 brought this action in the Superior Court of the State of California, County of Shasta.  
 18 Based on the location of the California state superior court where Plaintiff filed his  
 19 Complaint, the appropriate assignment of this action is to the Sacramento Division.

20       **VI. NOTICE OF STATE COURT AND PLAINTIFF**

21       85. Contemporaneously with the filing of this Notice of Removal in the  
 22 United States District Court for the Central District of California, as required by 28  
 23 U.S.C. § 1446(d), written notice of this Notice of Removal will be filed with the  
 24 Clerk of the Superior Court of the State of California for the County of Shasta.

25       86. In addition, such filing will be given by the undersigned to counsel for  
 26 Plaintiff.

27       87. WHEREFORE, Defendant prays that the Court remove this civil action  
 28 from the Superior Court of the State of California, County of Shasta, to the United

1 States District Court for the Eastern District of California.  
2  
3

Dated: March 17, 2025



---

5 GABRIEL M. HUEY  
6 STACEY CHIU  
7 K&L GATES LLP  
8 Attorneys for Defendant,  
WEYERHAEUSER NR COMPANY

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28